

Juridical Consequences and Legal Protection for Unregistered Waqf Land

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ABSTRACT

This study aims to investigate the legal implications of unregistered waqf land and the protection available to it. The research adopts a descriptive and normative legal research approach to analyze the legal framework surrounding waqf in Indonesia. The findings show that the government has enacted laws and regulations, such as Law no. 5 of 1960, Government Regulation No. 28 of 1977 concerning Waqf of Owned Land, and Law Number 41 of 2004 concerning Waqf, to ensure that waqf assets are legally protected and registered. According to positive law, the waqf pledge deed is considered an authentic deed that can be used as evidence in resolving future disputes regarding waqf land. The involvement of witnesses in the waqf pledge process is essential to guarantee the protection of waqf land. Despite the existing regulations, there are still unregistered waqf lands that need legal protection. The research reveals that legal protection for unregistered waqf land is available in Indonesia. However, the absence of registration and certification for waqf land creates uncertainty and makes it vulnerable to misuse by parties who are not responsible for the legal nature and purpose of waqf. Therefore, it is important to continue promoting the registration of waqf assets to ensure their legal protection and prevent any future disputes. The implications of this research contribute to the ongoing discussions on waqf land registration and provide a basis for further research in this field.

ABSTRAK

Penelitian ini bertujuan untuk menyelidiki implikasi hukum dari tanah wakaf yang tidak terdaftar dan perlindungan yang tersedia untuk tanah wakaf tersebut. Penelitian ini menggunakan pendekatan penelitian hukum deskriptif dan normatif untuk menganalisis kerangka hukum seputar wakaf di Indonesia. Temuan penelitian menunjukkan bahwa pemerintah telah memberlakukan peraturan perundang-undangan, seperti UU No. 5 Tahun 1960, Peraturan Pemerintah No. 28 Tahun 1977 tentang Perwakafan Tanah Milik, dan UU No. 41 Tahun 2004 tentang Wakaf, untuk memastikan bahwa aset wakaf dilindungi dan didaftarkan secara hukum. Menurut hukum positif, akta ikrar wakaf dianggap sebagai akta otentik yang dapat digunakan sebagai alat bukti dalam menyelesaikan sengketa tanah wakaf di kemudian hari. Keterlibatan saksi dalam proses ikrar wakaf sangat penting untuk menjamin perlindungan tanah wakaf. Terlepas dari peraturan yang ada, masih ada tanah wakaf yang tidak terdaftar yang membutuhkan perlindungan hukum. Penelitian ini menunjukkan bahwa perlindungan hukum untuk tanah wakaf yang tidak terdaftar sudah tersedia di Indonesia. Akan tetapi, tidak adanya pendaftaran dan sertifikasi tanah wakaf menciptakan ketidakpastian dan membuat tanah wakaf rentan disalahgunakan oleh pihak-pihak yang tidak bertanggung jawab atas sifat dan tujuan hukum wakaf. Oleh karena itu, penting untuk terus mempromosikan pendaftaran aset wakaf untuk memastikan perlindungan hukum dan mencegah sengketa di masa depan. Implikasi dari penelitian ini berkontribusi pada diskusi yang sedang berlangsung tentang pendaftaran tanah wakaf dan memberikan dasar untuk penelitian lebih lanjut di bidang ini.

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I. INTRODUCTION

Waqf land refers to a type of land ownership in Islamic law (sharia) where the ownership of the land is transferred from an individual or group of individuals to the public for charitable or religious purposes (Hartanto et al., 2021). The person or group making the waqf (known as a waqif) essentially donates the land to the public, with the understanding that it will be used for a specific purpose or set of purposes (Ismail et al., 2023). The purpose of waqf land can vary widely, but some common examples include building mosques, schools, hospitals, orphanages, or other public facilities that benefit the community. Once the land has been donated through waqf, it cannot be sold or transferred to another party, and any revenue generated from the land must be used for the specified purposes.

Waqf land has a long history in Islamic law and has played an important role in providing for the needs of communities through the ages. In modern times, waqf land is still used in many countries with significant Muslim populations as a means of providing for public goods and services in a sharia-compliant manner (Nurjannah & Abdullah, 2020).

Muslims are obligated by Islamic law to contribute land, as it can be used to build places of worship, schools, hospitals, cemeteries, and other facilities. However, waqf land cannot be sold (Zaman et al., 2020), inherited, transferred, donated, promised, or withdrawn/canceled, and must be conserved as evidence of Islamic civilization's global past (Article 40 of the Waqf Law No. 41 of 2004). Despite rising land prices, there is an increasing demand for land waqf within the Muslim community. Reasons for this include using abandoned land as a form of charity ordered by religion, promoting a sense of security and sufficiency among wakifs, enabling easier worship and practice of religious teachings, fostering social relations and a sense of community, and allowing the land to serve as a kind of inheritance (Anshori, 2018). However, many people are still perplexed by the concept of waqf land registration. They believe that if a block of land has been administratively registered by a government body, it has already been registered (Pradnyadana & Tanaya, 2022). However, agrarian law provisions are not the same. Land registration is a state job carried out by the government to provide legal clarity in the land sector (Indrawan & Munandar, 2022). The obligation to register land is held by the government, and its implementation is carried out in phases, depending on the availability of a basic registration map (Widyaningsih & Santoso, 2019).

The public's ignorance of waqf regulations, particularly Law Number 41 of 2004 concerning Waqf, could be attributed to a failure to socialize waqf land to the community. Given the prevalence of unregistered waqf land, it is necessary to assess how the community can comply with applicable law and avoid complicating administrative procedures.

Furthermore, the lack of proper understanding and awareness about waqf regulations and its legal implications may also contribute to the prevalence of unregistered waqf land. The failure to socialize and educate the public about the importance of waqf and the proper procedures for registration can result in the misuse and abuse of waqf land by parties who are not aware of its legal nature and purpose. As a result, it is crucial to evaluate the legal consequences and protections for unregistered waqf land to ensure the preservation and appropriate use of this important aspect of Islamic philanthropy (Jannah et al., 2020).

The word "*waqf*" comes from the Arabic word which means "hold," "brackets," or "stop" (Syarief, 2021). As described by Laluddin et al. (2021), "from the point of view of Islamic principles, waqf is the ownership of assets assigned for the purpose of benefiting beneficiaries of a philanthropic

purpose, and the use or income of waqf assets is continuous for beneficiaries and it is made for good reasons." In Indonesia, the conceptual understanding of waqf is contained in the waqf law no. 41/2004 where "waqf is defined as a legal act of *wakif* (waqf giver) to separate and surrender part of his property to be used forever or for a certain period of time in accordance with his interests for the purposes of worship and/or public welfare according to sharia (Islamic law)." In short, waqf is a type of fixed asset provided by a waqif, where the waqf is inspired by religion, and the benefits are determined to serve the purposes of society in general. Land is a waqf object since it is considered immovable property. However, the development of waqf land in Indonesia faces great opportunities and challenges (Fauzi et al., 2022; Nisa et al., 2022; Rusydiana et al., 2021).

Adijani al-Alabij (2016) grouped into 14 regulations as contained in the book Association of Land Endowment Legislation issued by the Ministry of Religion of the Republic of Indonesia, as follows:

Law no. 5 of 1960 dated 24 September 1960 concerning Basic Agrarian Regulations. Article 49 paragraph (1) indicates that "Owned Land Waqf is protected and regulated by Government Regulation. Government Regulation no. 10 of 1961 dated March 23, 1961 concerning Land Registration. Because this regulation is generally applicable, it also includes the registration of waqf land. Government Regulation no. 38 of 1963 dated 19 June 1963 concerning the appointment of legal entities that can own land rights. The issuance of Government Regulation (PP) No. 38 of 1963 is a realization of what is meant by article 21 paragraph (2) of the UUPA. Government Regulation no. 28 of 1977 dated 17 May 1977 concerning Waqf of Owned Land. Regulation of the Minister of Home Affairs No. 6 of 1977 dated 26 November 1977 Concerning Land Registration Procedures regarding Waqf of Owned Land. For the purposes of strong evidence, it is necessary to record and register the donated lands in accordance with the provisions of Government Regulation No. 10 of 1961. Regulation of the Minister of Religion No. 1 of 1978 Concerning Regulations for Implementing Government Regulation No. 28 of 1977 dated January 10, 1978 concerning Waqf of Owned Land. Regulation of the Minister of Home Affairs No. 12 of 1978 dated 3 August 1978 concerning the Addition of Provisions regarding Land Registration Fees for Certain Legal Entities to Regulation of the Minister of Home Affairs No. 2 of 1978. Joint Instruction of the Minister of Religion and Minister of Home Affairs No. 1 of 1978 dated 23 January 1978 concerning Implementation of Government Regulation No. 28 of 1977 Regarding Waqf of Owned Land. Regulation of the Director General of Islamic Community Guidance No. Kep/D/75/78 dated 18 April 1978 Concerning Forms and Guidelines for Implementing Regulations Concerning Owned Land Waqf. Decree of the Minister of Religion No. 73 of 1978 dated 9 August 1978 concerning Delegation of Authority for Heads of Regional Offices of the Ministry of Religion at Provinces/Equal Levels throughout Indonesia to Appoint/Dismiss Heads of Sub-District Religious Affairs Offices as Officials for Making Waqf Pledge Deeds (PPAIW). Instruction of the Minister of Religion No. 3 of 1979 dated 19 June 1979 concerning Instructions for Implementing the Decree of the Minister of Religion No. 73 of 1978. Letter of the Director General of Islamic Community Guidance and Hajj Affairs No. D JUSEd/14/1980 dated 25 June 1980 Concerning Use of Stamp Duty with Attachments to Letter of the Director General of Taxes No. S-629/PJ.331/1980 dated 29 May 1980 which determines which types of waqf forms are free of stamp duty, and which types of forms are subject to stamp duty, and how much the stamp duty is. Letter of the Director General of Islamic Community Guidance and Hajj Affairs No. D II/5Ed/07/1981 dated February 17, 1981 to Governors of Level I Regions throughout Indonesia, regarding Registration of Owned Land Waqf and requests for relief on exemption from all charges. Letter of the Director General of Islamic Community Guidance and Hajj Affairs No. D III/5/Ed/11/1981 dated April 16, 1981 concerning Instructions for Numbering on Owned Land Waqf Forms.

The novelty of this research lies in its evaluation of the legal consequences and protections for unregistered waqf land, which is essential for the preservation and appropriate use of this important aspect of Islamic philanthropy. The article addresses the public's ignorance of waqf

regulations and the failure to socialize waqf land to the community, which can lead to the misuse and abuse of waqf land by parties who are not aware of its legal nature and purpose. The article also highlights the need to assess how the community can comply with applicable law and avoid complicating administrative procedures regarding the registration of waqf land.

One of the legal issues related to waqf land is the proper registration of the land. The obligation to register land is held by the government, and its implementation is carried out in phases, depending on the availability of a basic registration map. The failure to socialize and educate the public about the importance of waqf and the proper procedures for registration can result in the prevalence of unregistered waqf land. Another legal issue is the misuse and abuse of waqf land by parties who are not aware of its legal nature and purpose. The lack of proper understanding and awareness about waqf regulations and its legal implications may contribute to the misuse and abuse of waqf land. Therefore, it is crucial to evaluate the legal consequences and protections for unregistered waqf land to ensure the preservation and appropriate use of this important aspect of Islamic philanthropy.

In order to provide a comprehensive understanding of the implications and challenges of unregistered waqf land and to propose recommendations for improving the registration and protection of waqf land in Indonesia, this study aimed to find out: (a) the juridical consequences of unregistered waqf land; and (b) the legal protection of unregistered waqf land.

Likewise, the study will be guided by the following research questions: "What is the legal status of waqf land that has not been registered?" and "What legal measures are in place to safeguard the interests of unregistered waqf land?"

II. RESEARCH METHODS

This research was conducted to investigate the legal conditions and phenomena related to the research issue. The research design was based on descriptive and normative legal research. Descriptive research aimed to obtain a complete picture of the legal conditions that applied in a certain place and at a certain time, or regarding existing juridical phenomena, or certain legal events that occur in society. Normative legal research focused on analyzing legal norms, principles, and rules that guide human behavior in society.

The primary data sources for this research were related laws, research results, and scientific works from legal communities related to the research issue. The research also used secondary data collected through literature review and data analysis. The data were analyzed using an induction analysis, which included activities such as deduction, presentation, and drawing conclusions.

To ensure the legality of the research, ethical considerations were taken into account, and the research design was reviewed by a legal expert. Any potential legal or ethical issues that arose during the research were addressed promptly.

III. RESULTS AND DISCUSSION

1. Juridical Consequences of Unregistered Waqf Land

Waqf land refers to property or real estate that has been dedicated to religious or charitable purposes in perpetuity under Islamic law (Laluddin et al., 2021). If the waqf land is not registered, it can lead to certain juridical consequences, such as: (a) Lack of legal protection, Waqf land that is not registered may not be recognized as a legal entity according to law, which means that waqf land may not receive legal protection by the authorities. This can make the property vulnerable to encroachment or illegal possession. (b) Inability to legally transfer ownership, Without registration, waqf land cannot be legally transferred to other parties or entities. This can hinder the waqf's ability to sell or dispose of the property. (c) Uncertainty of legal ownership, If the waqf land is not

registered, it may be difficult to determine who the real owner of the property is. This can lead to ownership disputes or multiple-party claims. (d) Difficulty getting financing, Unregistered waqf land cannot be accepted as collateral for loans or other forms of financing from financial institutions. This can make it difficult for the waqf to raise funds for its activities or to develop properties. (e) Additional tax payable, Unregistered waqf land may be taxed by the government, which may result in additional tax payable for the waqf.

Overall, waqf land must be registered to ensure its legal protection and to facilitate its proper use and management (Fauziah et al., 2021). The need for official registration of waqf land arises from the importance of monitoring the presence of waqf land and preventing acts forbidden in Waqf Law number 41 of 2004. According to Waqf Law Number 41 of 2004, assets that can be donated include both immovable and movable objects. Land is a type of immovable property that can be given away. The legislation also specifies that gifted land cannot be sold or promised by the parties to third parties.

Article 40 of Law Number 41 of 2004 concerning waqf states that donated property may not be pledged as collateral, confiscated, donated, or transferred in other forms of transfer of rights. This certainty is excluded if the donated land is used for public purposes in line with the general spatial plan (PUPR) based on the provisions of the applicable laws and regulations and does not clash with Islamic law. This transition includes the public interest in how many people can use and access infrastructure, but it is also tied to the advantages of infrastructure for the welfare and progress of society (Muhtada, 2019). Waqf land may not be treated as banned by law in addition to these expectations. These practices are the reason for the need for official registration of waqf land, which indicates that waqf land registration is designed to receive oversight from linked parties and prevent illegal practices.

Supervision is an absolute requirement in the practice of waqf (Anwar, 2020). Thus far, the practice of waqf by nadzirs in various waqf organizations has received little scrutiny. This causes the waqf land to be neglected and, in extreme cases, to disappear. As a result, with the advancement of waqf practice, the supervisory role of waqf land cannot be overlooked. There are two types of waqf land supervision: community supervision and competent government supervision. Community oversight is carried out by waqf property councils or social groups in compliance with administrative and financial feasibility norms based on market standards. Community oversight can take the shape of *nazhir*, *wakif*, or the entire community. Furthermore, this monitoring is claimed to be more effective than government supervision because it is local in character, especially for each waqf property against persons who are entitled to waqf land with a direct purpose.

Government oversight, on the other hand is a type of periodic external oversight. Administratively, the government's management of waqf land controls waqf finance and administration using certain criteria and production drawn from administrative supervisory firms that do comparable functions. The government's financial supervision is also based on the concepts of external supervision carried out by financial auditors and regulatory inspectors. The waqf ministry must utilize a specific institution that is competent and based on scientific facts from the actions of institutions that engage with the market system to carry out two forms of oversight, both financial and administrative, to waqf managers from the private sector (Syaifullah & Idrus, 2019). The Ministry of Religion and the Indonesian Waqf Board provide government oversight. The ministry of waqf, which carries out both financial and administrative supervision on waqf managers from the private sector, must utilize a specific institution that is competent and based on scientific facts from the operations of institutions that operate with the market system.

All types of oversight cover administrative and financial issues concurrently, from waqf land registration to the distribution of waqf management revenues and the allocation of waqf assets. The goal of community or government monitoring is to guarantee that waqf land is appropriately

managed and developed, and that it can contribute to communal welfare. Also, the most crucial aspect of oversight is to avoid illegal practices.

The monitoring of waqf land assets is critical to the urgency of formally registering waqf land (Jannah et al., 2020). The supervision of waqf land is governed by Article 63 of the Waqf Law of 2004. According to the article, the Ministry of Religion supervises waqf management through including the Indonesian Waqf Board (hereinafter referred to as BWI) in terms of coaching and heeding recommendations, as well as considering the Indonesian Ulema Council (MUI) so that the objectives and functions of waqf administration can be realized. By involving the Indonesian Waqf Board, the Ministry of Religion can collaborate with social organizations, professionals, international institutions, and other parties deemed relevant for developing waqf administration. In fact, the Ministry of Religion can use a public accountant to oversee waqf management.

Additionally, Article 65 of Law Number 41 of 2004 on Waqf states that the Ministry may engage a public accountant in carrying out monitoring. In more detail, it is explained in Article 56 of Government Regulation Number 42 of 2006 that waqf land supervision might be conducted out actively or passively. The government actively supervises nadzirs or waqf land managers by inspecting them at least once a year. Meanwhile, the government conducts passive monitoring by reviewing various reports presented by nazirs about waqf management. In this instance, the community has the option of reporting Nadzir's waqf management to the government. In the audit of waqf land supervision, the government can engage the services of an independent public accountant. Essentially, waqf property supervision necessitates the cooperation of multiple involved shareholders. Donation participation involves not only particular persons, but also poor groups, such as people who make contributions (Rodiyah et al., 2018).

In Law no. 41 of 2004 concerning Waqf article 6 states that waqf is implemented by fulfilling the waqf elements as follows: (a) *Waqif*; (b) *Nadzir*; (c) waqf property; (d) Waqf Pledge; (e) Allocation of waqf assets; (f) Waqf Term.

The element is the equivalent of the word pillars which means something that is the main joint and the main element in the formation of something. While the elements or pillars of waqf contained in the waqf law as mentioned above there are six (6), of which almost all of these elements are fulfilled. And in these six elements that are no less important is the waqf pledge.

Article 1 paragraph (3) explains that what is meant by a waka pledge is a statement of the will of the wakif spoken orally and/or in writing to the nadzir to donate his property. Then in article 17 of the Waqf Law it is stated that: (a) The waqf pledge was carried out by the wakif to the nadzir before Waqf Pledge Deed Official (*Pejabat Pembuat Akta Ikrar Wakaf/PPAIW*) witnessed by 2 (two) witnesses. (b) The waqf pledge as referred to in paragraph (1) is stated verbally and or in writing and is stated in the waqf pledge deed by PPAIW. So according to the provisions of the article above, waqf must be witnessed by at least two witnesses and carried out before PPAIW who then stated it in the waqf pledge deed.

Articles 32 to 39 of the Waqf Law No. 41 of 2004 further restrict the procedures for waqf asset registration and announcement. After signing the Waqf Pledge Deed, PPAIW registers waqf assets with the appropriate authorities on behalf of the nadzir no later than 7 (seven) business days after the Waqf Pledge Deed is signed. PPAIW submits the following information while registering the waqf property: (a) Copy of waqf pledge deed; (b) Letters and/or proof of ownership and other related documents.

After this is done, the authorized agency issues proof of registration of waqf assets, then the proof of registration is submitted by PP AIW to the nadzir. What is meant by proof of registration of waqf assets, as stated in the Elucidation of the Law. RI No. 41 of 2004 concerning Waqf, is a certificate

issued by an authorized government agency stating that waqf assets have been registered and registered with the State with status as waqf assets.

From the explanation above, which is based on the Waqf Law, it can be concluded that waqf pledges are made verbally and/or in writing witnessed by at least two witnesses and before PPAIW who then records them in the Waqf Pledge Deed. After completion, PPAIW registers waqf assets with the authorities, namely the National Land Agency, and then the authorized agency issues proof of registration of waqf assets. Because of the considerations above, waqf land that is not registered as what happened to waqf land is invalid or null and void by law. This also means that waqf land whose legal ownership status is not registered is held by the wakif or his heirs respectively.

2. Legal Protection of Unregistered Waqf Land

Realizing how important land issues are in Indonesia, the government together with the DPR RI have enacted a Law on Basic Agrarian Regulations (UUPA), namely Law no. 5 of 1960 which was enacted on September 24, 1960. In his preamble to the Opinion section, the letter 'a' states:

“That in connection with what is mentioned in the considerations above, it is necessary to have a national agrarian law, which is simple and guarantees legal certainty for all Indonesian people, without neglecting elements that rely on religious law. In this regard, Article 14 paragraph (I) letter b of the UUP A stipulates that the Indonesian government within the framework of Indonesian socialism makes a general plan regarding the supply, allocation and use of earth, water and space as well as the natural resources contained therein. In the allotment as referred to above, including for other sacred purposes, in accordance with the basis of Belief in the One and Only God”.

More specifically, this requirement which includes religious interests is referred to in article 49 paragraph (3) of the UUPA which confirms that the waqf of owned land is protected and regulated by government regulations. As a realization of this provision, Government Regulation No. 28 of 1977 concerning Waqf of Owned Land, which was stipulated on May 17, 1977. As a follow-up to PP No. 28 of 1977, several regulations were issued as follows: (a) Implementation regulations for PP No.28/1977 regulated by Minister of Religion Regulation No. I in 1978. (b) Joint Instruction of the Minister of Religion and the Minister of Internal Affairs No. I in 1978. (c) Decree of the Minister of Religion No.73 of 1978 regarding the delegation of authority to the Heads of Regional Offices of the Ministry of Religion of the Provinces/levels throughout Indonesia to appoint/dismiss each KUA Head as PPAIW. (d) Instruction of the Minister of Religion No.3 of 1978 concerning instructions for implementing the Decree of the Minister of Religion No.73 of 1978. (e) Instruction of the Minister of Religion No.3 of 1978 regarding guidance and development to religious legal entities that own land. (f) Joint Instruction of the Minister of Religion and the Head of the National Land Agency No.4 of 1990/No.24 of 1990 concerning Certification of Waqf Land. (g) Various Decrees and Circulars of the Director General of Islamic Community Guidance and Hajj Affairs relating to waqf. (h) Compilation of Islamic Law socialized with Presidential Instruction No. 1 Year 1991.27. (i) Law of the Republic of Indonesia Number 41 of 2004 concerning Waqf.

Legal certainty over waqf assets is a necessity as a guarantee that events have occurred in waqf law. Among the forms of legal certainty is evidence of recording (written evidence) in an authentic deed (Aribowo, 2020). Because marriage can only be proven by a marriage certificate, and if it cannot be proven by a marriage certificate, then the marriage certificate can be submitted to the Religious Court, the same is true in the case of waqf. If there is no waqf pledge deed or waqf certificate, you must also be able to apply for waqf isbat to the Religious Court to obtain legal certainty (Ministry of Religion). In order to realize legal certainty over waqf assets in the elucidation of Law Number 41 of 2004 concerning waqf it is stated that every legal act of waqf must be recorded and set forth in a pledge deed and registered and announced that the implementation is carried out in accordance with the procedures regulated in the applicable laws and regulations.

Law Number 41 of 2004 concerning Waqf in article 17 describes the Waqf Pledge Deed, it can be understood that the deed is an authentic deed that can be used in resolving disputes that may arise in the future regarding waqf land (Musyarrafah, 2021). This is in line with Article 1868 of the Civil Code, namely: “Authentic deed is a deed drawn up in a form determined by law by or before a public official who has the power to do so, at the place where the deed was made”.

From this explanation it can be understood that waqf with the Waqf Pledge Deed is legal and can be protected by law. AIW is an authentic deed made by an authorized official which is proof that waqf has been issued. The implementation of the Waqf Pledge is witnessed by at least two witnesses, this is a perfect condition for handing over the waqf. Therefore, the waqf pledge process is considered imperfect if the witness is not involved. The role of the witness is also as a person who is asked for information at a later date if there is a dispute over waqf land, both outside and inside the court. The position of a witness is one of the things that can guarantee the protection of waqf land as it is understood that a witness is a person who knows about the events or circumstances that he has seen, heard and experienced. This witness can provide information if in the future something undesirable happens to the waqf land.

Even though there are already regulations governing waqf and procedures for registering waqf as in Law Number 41 of 2004 and Government Regulation Number 42 of 2006. However, there are still waqf lands that have not been certified, this is because most people do not know and do not understand regarding the procedures for registering waqf and the importance of waqf land certificates. Based on these facts, the discussion team for the Religious Courts at the National Working Meeting of the Supreme Court of the Republic of Indonesia which was held in Makassar discussed the large number of waqf lands that were still not certified and did not yet have a waqf pledge deed. Thus, it is necessary to have a court decision to deal with uncertified waqf.

In addition to the issuance of Law Number 41 of 2004 and Government Regulation Number 42 of 2006 concerning the implementation of Law Number 41 of 2004 concerning waqf and Government Regulation Number 28 of 1997 concerning ownership of private land which is the implementation of Article 49 paragraph (3) of the Law It is hoped that Number 5 of 1960 concerning Basic Agrarian Regulations (UUPA) will further strengthen and protect waqf land in accordance with its function and designation. In Government Regulation Number 28 of 1977 (Article 9) it is explained that waqf must be made in writing, it is not enough just to make an oral pledge. The aim is to obtain authentic evidence, for example as a complete document for registration of waqf land at the Agrarian Office or as valid evidence in the event of a dispute at a later date regarding the land that has been granted.

Basic Agrarian Law No. 5 of 1960 has also emphasized the importance of legal certainty regarding the status of land, especially land designated for social activities (waqf land). Article 19 of the law states that: (a) In order to guarantee legal certainty by the Government, land registration is carried out throughout the territory of the Unitary State of the Republic of Indonesia in accordance with the provisions stipulated in Government Regulations. (b) Registration as referred to in paragraph (1) of this article includes: 1) Measurement, mapping and bookkeeping of land 2) Registration of land rights and the transfer of said rights 3) Provision of letters of proof of title which are strong evidence.

This isbat waqf case is the authority of the Religious Courts, this is based on Law no. 14 of 1970 which was amended by Law Number 4 of 2004 concerning Judicial Power and Law Number 3 of 2006 concerning the Religious Courts. In Law Number 14 of 1970 as amended by Law Number 4 of 2004 concerning Judicial Power it is stated in Article 2 paragraphs 1 and 2 which reads:

“(1) The exercise of judicial power as referred to in Article 1 is handed over to a judiciary body and is determined by law with the main tasks of receiving, examining and adjudicating and settling every case submitted to it; (2) Tasks other than those mentioned in paragraph (1) may be assigned

to him based on statutory regulations. So it is necessary to have a certificate on waqf land in order to solve the problem of waqf land that has not been certified so that it can guarantee its existence and provide strong legal certainty”.

There is a tendency in the community, they think that even without certification the legal certainty of waqf land rights is quite guaranteed. From observations in the field it is also known that there have been very few waqf land disputes. This means that after several years there are rarely lawsuits, demands or disputes over waqf land. More or less, it contributes to a sense of security for waqf land holders. Then added to the fact that there are still many community or religious leaders who do not fully understand the various sets of regulations regarding waqf land and land registration.

Very little effort has been made by competent parties to provide counseling and information to the public regarding the registration of waqf land. In this regard, Fuller put forward eight values embodied by law and also called the “eight principles of legality” (Wacks, 2020). Among the eight principles are: the regulation must be properly announced. On the other hand, five conditions that must be met in making the legal system effective, including: whether or not there are broad circles in society who know the contents of the legal rules in question (Mangku, 2020). Because according to Satjipto Rahardjo, legal communication is one of the factors in addition to other factors in the framework of forming public understanding, acceptance and obedience to the contents of the law (H. Ishaq, 2018).

Based on article 12 Government regulation (PP) No. 28 of 1977 concerning waqf of owned land stipulates that the settlement of disputes insofar as it concerns land endowment issues, is channeled through the local Religious Court, in accordance with the provisions of the applicable laws and regulations, while Law no. 41 of 2004 concerning Waqf states that settlement of endowment disputes is taken through deliberations to reach a consensus, if the dispute resolution is not successful, the dispute can be resolved through mediation, arbitration, or court. What is meant by dispute resolution, namely what is stated in article 49 of Law no. 7 of 1989 concerning PA, is the settlement of disputes insofar as it concerns the issue of land endowments regarding whether or not the act of endowment is legal and other issues related to issues of endowments based on Islamic law are the authority of the Religious Courts.

In Regulation of the Minister of Religion No. 1 of 1978 ha! This is explained in Article 17 paragraph (1) which stipulates that the Religious Courts administering waqf are obliged to examine and settle cases concerning land endowments according to Islamic law, including regarding: (a) waqf, wakif, nadzir, pledge, witness; (b) *bayyinah* (evidence of waqf administration); (c) management and utilization of waqf proceeds.

Thus to resolve waqf cases that are not listed above, if amicable paths or non-litigation settlements have been pursued but have not found a solution, then based on the regulations that have been stipulated, the problem can be resolved through the Religious Court which oversees it by earning information from the parties. related to the waqf and witnesses *istifadlah*.

In the end, the problem of registration and certifying of waqf land aims to protect the existence of Allah's property, so that it is necessary to be open to all parties regarding the condition and status of waqf land to make planned and sustainable efforts to realize real protection of waqf land. And in essence dealing with the issue of waqf land includes struggle because it is not a field that can be commercialized so that the mere sincerity of worship to gain the pleasure of Allah must be owned by all parties related to waqf.

IV. CONCLUSION

The study on "Juridical Consequences of Unregistered Waqf Land" reveals that unregistered waqf land faces several legal challenges, including lack of legal protection, vulnerability to encroachment or illegal possession, and inability to legally transfer ownership. Ownership disputes or multiple-party claims can arise due to the uncertainty of legal ownership, and unregistered waqf land cannot be accepted as collateral for loans or other forms of financing. The study also indicates that unregistered waqf land may be taxed by the government, resulting in additional tax payable for the waqf. These findings suggest that it is crucial to register waqf land to secure legal protection, transfer ownership, and avoid legal disputes or additional taxes. In this case, the Indonesian government has enacted laws and regulations to ensure legal protection of unregistered waqf land. The Law on Basic Agrarian Regulations (UUPA) and Government Regulation No. 28 of 1977 concerning Waqf of Owned Land provide legal certainty over waqf assets. Every legal act of waqf must be recorded and set forth in a pledge deed and registered to obtain legal certainty. The Waqf Pledge Deed is an authentic deed that can be used to resolve disputes that may arise in the future regarding waqf land. The implementation of the Waqf Pledge is witnessed by at least two witnesses, whose role is important in guaranteeing the protection of waqf land. However, there are still waqf lands that have not been registered, and further efforts are needed to ensure the legal protection of unregistered waqf land.

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